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BEFORE THE ARIZONA CORPORATION

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Commissioner

Arizona Corporation Commission

DOCKETED

AUG 29 2003

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IN THE MATTER OF U S WEST
COMMUNICATIONS, INC.'S
COMPLIANCE WITH § 271 OF THE
TELECOMMUNICATIONS ACT OF
1996

IN THE MATTER OF QWEST
CORPORATION'S COMPLIANCE
WITH SECTION 252(e) OF THE
TELECOMMUNICATIONS ACT OF
1996

ARIZONA CORPORATION
COMMISSION

Complainant.

v.

QWEST CORPORATION

Respondent.

DOCKET NO. T-00000A-97-0238

DOCKET NO. RT-00000F-02-0271

DOCKET NO. T-01051B-02-0871

COMMENTS OF TIME WARNER TELECOM

AUGUST 29, 2003

I. Time Warner Telecom

Time Warner Telecom of Arizona LLC ("Time Warner Telecom") is a leading provider of "last-mile" broadband data, voice, dedicated internet access, and dedicated web hosting in the Phoenix and Tucson metropolitan areas. In 2001, Time Warner Telecom entered the Phoenix and Tucson markets by purchasing out of bankruptcy substantially all of the assets of GST Telecommunications Inc. Since that time, Time Warner Telecom has been committed to expanding its Arizona network, offering robust and creative new products, and superior customer care. Time Warner Telecom is one of Qwest's major wholesale customers and will be impacted by the Settlement Agreement proposed by Qwest and Commission Staff.

II. The Settlement Proposal

The settlement proposal generated by Qwest suffers from two serious infirmities. First, the Settlement Agreement (Notice of Filing Settlement Agreement, July 25, 2003, Docket No. T-00000A-97-0238) was outlined, drafted and agreed upon without any material CLEC input. The irony here is extraordinary. Qwest is alleged to have engaged in anti-competitive conduct that harmed CLECs, and yet Qwest and Commission Staff propose to settle the case without any substantial CLEC input or without fully addressing the harm caused to carriers like Time Warner Telecom. The two brief opportunities that a handful of CLECs were given to comment on the Agreement resulted in no substantial change to the Agreement.

The second serious problem with the Settlement Agreement is its failure to remedy the harms identified in the very cases that are the subject of settlement. The CLEC discounts and credits are not as broad as (or better than) the discounts and credits secured by Eschelon and McLeod by way of their secret agreements. In other words, this Agreement does not restore

CLECs to a level playing field with Qwest, Eschelon and McLeod. In spite of this failing, Qwest is allowed under the Settlement Agreement to direct the vast majority of the settlement penalty toward improving the value of the Qwest brand by building new facilities and promoting the general public welfare (in Qwest's name). This is akin to allowing a gas wholesaler to settle an antitrust price fixing suit by underwriting a clean air campaign. Although it is good to reduce air pollution, those harmed by the wholesaler's anti-competitive conduct should be made whole before resources are directed to general public concerns. By the same token, CLECs should be made whole before Qwest is permitted to expend penalty dollars on causes that promote its own business interests.

Given these two failings, Time Warner Telecom asks that the Commission reject this Settlement Agreement and direct the Commission Staff and Qwest to sit down and negotiate a new Settlement Agreement, or at least a framework for a new Agreement. The new agreement should benefit the victims of Qwest's anti-competitive conduct -- the CLECs. The current proposal serves the interests of the wrongdoer rather than its victims, and thus it is no coincidence that it does not have a single CLEC supporter.

III. Proposed Revisions

If the Commission instead decides to go forward with this settlement, Time Warner Telecom asks that the following four changes to the Agreement be implemented:

A. The Agreement Should Not Limit the 10% Discount to 251(b) & (c) Services

The Proposed Settlement provides for a 10% discount credit only on Section 251(b) and (c) services. This was not the discount given Eschelon and McLeod ("favored CLECs") under the secret agreements, and should not be the discount now offered to disfavored CLECs.

Eschelon and McLeod received a 10% discount on *all purchases* from Qwest, including intrastate services, interstate switched access, special access, and private line. Time Warner Telecom submits that the Settlement Agreement should require Qwest to give all disfavored CLECs a 10% discount for all services purchased between January 1, 2001 and June 30, 2002 ("Discount Period").

B. Purchased Receivables

In January 2001, Time Warner Telecom purchased substantially all of GST Telecommunications assets, including all claims, receivables, and general intangibles. CLEC restructurings were common in 2001, and a number of companies filed for bankruptcy, dissolved, merged, or reorganized during the Discount Period. For the benefit of all CLECs involved in such restructurings, Time Warner Telecom requests that the Settlement Agreement, or the Commission Order approving the Agreement, expressly provides that payment shall be made by Qwest under the Agreement to any documented successor or assign in interest of a former CLEC without any further proceedings. The following language could be used to achieve this result:

Discount Credits, Access Line Credits, and UNE-P Line Credits payable to a CLEC that has since been the subject of a bankruptcy, dissolution, restructuring or merger ("Absent CLEC"), shall be made to the documented successor or assign of the claim without additional proceedings or delay.

C. Payment of Discount Credits

CLECs should receive interest, at the statutory rate, for credits or discounts received under the Settlement Agreement. Qwest unlawfully collected funds from disfavored CLECs during the Discount Period. In holding this money for more than two years, Qwest has further damaged CLEC interests. Time Warner Telecom also requests that the Commission require Qwest to pay the entire cash value of the discounts or credits in cash or wire transfer within 30

days of approval of the Settlement Agreement. Time Warner Telecom strongly opposes any arrangement whereby Qwest waits six months (180 days) following approval of the Agreement and then credits CLEC against future debt (rather than paying outright) money owed under the Settlement Agreement. Once the payment is made, CLEC parties should be entitled under the Agreement to seek correction of the amount paid if CLEC records indicate that the discount or credit was incorrectly calculated by Qwest.

D. Release

The Release proposed by Qwest is inappropriate. (See attached Exhibit A.) CLECs already tolerate anti-competitive conduct by Qwest in Arizona that goes unreported. Given this environment, Qwest should not be authorized to extract through this Settlement full releases from all CLECs for all conduct that may relate to prices charged by Qwest, interconnection agreement filing obligations, or Qwest's 271 application. Any release proposed should instead be limited to the specific remedy authorized under the Agreement. A broad release, such as the one proposed by Qwest, would either (a) shrink the number of CLECs requesting the discounts and credits (creating an advantage for Qwest) or (b) eliminate legitimate claims CLECs have against Qwest (also an advantage for Qwest).

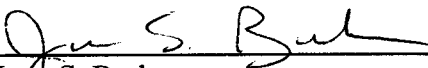
Conclusion

Time Warner Telecom opposes the Settlement Agreement proposed by Staff and Qwest, which was generated without substantial CLEC participation. Time Warner Telecom recommends that the Commission direct Staff and Qwest to sit down with all interested parties and negotiate a new settlement that advances all parties' interests. If Qwest is unwilling to enter

into such negotiations, the Commission should proceed to resolve each of the three cases based on the evidence and with the full participation of all parties.

Submitted this 29th day of August, 2003.

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CERTIFICATE OF SERVICE

I certify that the original and 17 copies of COMMENTS OF TIME WARNER TELECOM regarding Docket Nos. T-00000A-97-0238, RT-00000F-02-0271, and T-01051B-02-0871 were hand delivered this 29TH day of August, 2003, to:

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and that a copy of the foregoing was mailed this 29TH day of August, 2003, to the following:

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EXHIBIT A

RELEASE OF ALL CLAIMS

KNOW ALL PERSON BY THESE PRESENTS:

WHEREAS, on or about **DATE**, 2003, The Arizona Corporation Commission ("Commission") approved a settlement agreement between Qwest Corporation ("Qwest") and the Arizona Corporation Commission Staff ("Staff") (collectively, "the Parties") with respect to currently pending before the Arizona Corporation Commission ("Commission"), specifically Docket No. RT-00000F-02-0271 (the "252(e) Unified Agreements; Docket No. T-00000A-97-0238 (the "271 Subdocket"); and Docket No. T-0151B-02-0871 (the "Order to Show Cause" or "OSC"). These dockets shall be collectively referred to in this Agreement as the "Litigation."

WHEREAS, as part of the Agreement, certain competitive local exchange carriers certificated by the Commission to provide local exchange services in Arizona, who purchased interconnection services or unbundled network elements under Section 251(b) or (c) of the Act from Qwest may be entitled to receive Discount Credit, Access Line Credit or UNE-P Credit under the terms of this Agreement.

WHEREAS, **NAME OF CLEC** desires to adopt the Agreement and receive the benefits contained therein, including execution of this Release of All Claims, as referenced in Paragraph __ of the Agreement

1. In consideration for the payment of Discount Credits, Access Line Credits and/or UNE-P Credit under the Agreement, the receipt and sufficiency of which are hereby acknowledged, **NAME OF CLEC** releases any and all claims, causes of action, rights, liabilities, complaints before or to a regulatory or governmental body, suits, and obligations of every nature, kind or description whatsoever regardless of what legal theory based, and regardless of whether grounded in common law, statute, administrative rule or regulation, tariff, contract, tort, equity or otherwise, including, but not limited to, claims or causes of action for fraud, misrepresentation, discrimination, violation of any law of the State of Arizona, violation of any tariff, breach of contract, the violation of federal statutes, rules or regulations, which **NAME OF CLEC** had, has, may hereafter have, or which any other person had, has, or may hereafter have through **NAME OF CLEC** based in whole or in part upon any act or omission of Qwest that is the subject of the Litigation including but not limited to Qwest's failure to file agreements with the Commission for review pursuant to Section 252 of the Telecommunications Act of 1996.

2. This Release of All Claims reflects a fully binding and complete settlement between Qwest and any CLEC pertaining to the Litigation referenced above.

3. This Release of All Claims shall be construed, interpreted, and enforced in accordance with the laws of the State of Arizona.

4. In the event that any Party commences any action or proceeding against another Party or Parties to this Agreement by reason of any breach or claimed breach of any provision, covenant or representation of this Agreement, or commences any action or proceeding in any way connected with this Agreement, or seeks a judicial declaration of rights hereunder, the Party prevailing in such action or proceeding shall be entitled to recover from the other Party the prevailing Party's reasonable attorneys' fees, costs, and any costs of collection, including reasonable attorneys' fees.

5. This Release of All Claims represents the Parties' mutual desire to compromise and settle all disputed claims at issue in the Litigation in a manner consistent with the public interest and based upon the pre-filed testimony and exhibits and the evidentiary record developed in the Litigation. This Release of All Claims represents a compromise of the positions of the Parties. Acceptance of this Release of All Claims is without prejudice to any position taken by any party in the Litigation and none of the provisions may be referred to, cited or relied upon by any other party in any fashion as precedent or otherwise in any proceeding before this Commission or any other regulatory agency or before any court of law for any purpose except in furtherance of the purposes and results of this Release of All Claims.

6. The provisions of this Release of All Claims may not be waived, altered, or amended, in whole or in part, without the written consent of the Parties.

7. The terms of this Release of All Claims are contractual and not mere recitals, and no representations have been made which are not contained herein.

8. This Release of All Claims constitutes the full and complete understanding of the Parties and supersedes any prior understandings or agreements, whether oral or in writing.

9. In the event that any term, covenant, or provision of this Release of All Claims shall be held by a court of competent jurisdiction or any regulatory or governmental body including the Commission to be invalid or against public policy, the remaining provisions of this Release of All Claims shall remain in full force and effect.

10. The Parties hereby represent to each other that they have reviewed and understand this Release of All Claims, and that no party shall deny the validity of this Release of All Claims on the grounds that they did not understand the nature and consequences of this Release of All Claims or did not have the advice of counsel. This Release of All Claims is the result of negotiations between the Parties, each of which has participated in the drafting of this Release of All Claims.

11. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.